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No. 09-1392

Supreme Court, U.S.
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In The

Supreme Court of the United States

DON H. HAYCOCK,

Petitioner,

v.

NORMAN L. EPSTEIN, Justice of the Second Appellate District, STEVEN C. SUZUKAWA, Justice of the Second Appellate District, NORA M. MANELLA, Justice of the Second Appellate District, and STATE OF CALIFORNIA,

Respondents.

On Petition For A Writ Of Certiorari To The Ninth Circuit Court Of Appeals

SUPPLEMENTAL BRIEF (SECOND)

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This supplemental brief, submitted under Rule 15-8, provides: "Any party may file a supplemental brief at any time while a writ of certiorari is pending, calling attention to . . . other intervening matters not available at the time of the party's last filing." Also, Rule 28 U.S.C. 352(c); and, Judicial Council Rule (18) (b), provide: A complainant aggrieved by an order of the Chief Justice may petition the Judicial Council for review thereof by filing in the office of the clerk of the Court of Appeals within 35 days of the clerk's letter to complainant transmitting the Chief Justice's order. These mandates to petitioner's petition for review by the Judicial Council were arbitrarily rejected by the Ninth Circuit on July 15, 2010.

Appellee Justices, of the California Second Appellate District, do not dispute fabricating facts to create an *equity defense* so they could rule for a favored party, and bypass that favored party's violation of California's one-year statute of limitations. And, further falsely claim their fabricated facts applied to a California Supreme Court decision that granted an *equity defense* based on facts similar to facts they had fabricated, However, in that case, the *equity defense* was claimed in the trial court, sustained in the appellate court and *rejected* in the California Supreme Court. A further fabrication by Appellee Justices of California case law. (*Lantz v. Centex Homes* (2003) 31 Cal.4th 363) Their decision would violate California law *even* if their fabricated facts were true. California's Constitution prohibits its

appellate courts rendering *equity decisions*. They had *absolutely no jurisdiction*, to make this *equity decision*.

After the Supreme Court of California refused to address these fabrications of facts, of case law, and violation of California's Constitution, this case was appealed to the Federal District Court under the Fourteenth Amendment, and came before the Judge and Magistrate charged with judicial misconduct.

Petitioner's brief to this District Court again charged violation of California's one-year statute of limitations. *No defense to this charge was offered by California Appellee Justices*. They had abandoned their fabricated *equity defense* and pleaded – for the first time – that they had "Absolute Judicial Immunity" to create, and fabricate, an *equity defense*; and were not personally liable. They also pleaded the *Rooker Feldman* defense, claiming this federal court lacked jurisdiction to rule on their *equity defense*. The accompanying Supplemental Brief proves that even if these defenses were relevant – which they are not – neither is applicable to the undisputed facts under U.S. Supreme Court decisions and California Supreme Court decisions in petition.

The complaint against the District Court Judge and Magistrate is, that they not only refused to address the statute of limitations violation – they actively and clandestinely prevented the statute of limitations violation becoming an issue – as the accompanying Supplemental Brief proves. Consequently,

their Judgement *is based* entirely on Appellee Justices' two belated defenses of "Absolute Judicial Immunity" and the *Rooker-Feldman* defense. Defenses only supported by general references to case law *that could only apply* by applying the facts to these cases. Petitioner's opposition to these defenses was also ignored both by Appellee Justices and District Court Judge and Magistrate.

This Judge and Magistrate intentionally refused to acknowledge that Appellee Justices' abandonment of their *equity defense – terminated this lawsuit*. The one-year statute of limitations defense prevailed – without opposition – barring this lawsuit *ab initio*. Appellee Justices offered no defense to violation of the one-year statute of limitations in both the California and the federal courts. This lawsuit was filed 19-months after being barred by the one-year statute of limitations. The only issue remaining is the personal liability of these Appellee Justices.

Under U.S. Supreme Court decisions, Appellee Justices are each personally liable for damages: " . . . Where there is clearly no jurisdiction of the subject matter any authority exercised (by Appellee Justices) is usurped authority, and for the exercise of such authority, when want of authority is known to the judge, *no excuse is permissible*." (*Stump v. Sparkman*, page 13 of Petition for Writ of Certiorari.)

"When a judge (Appellee Justices) knows that he (they) lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving them of jurisdiction,

judicial immunity is lost." (*Rankin v. Howard* and *Zeller v. Rankin*, page 9 of Petition.)

Appellee Justices had *no jurisdiction* to fabricate an *equity defense* based on fabricated facts; and their intentional misrepresentation of the decision by the California Supreme Court, all for the purpose of defeating a valid, and undisputed one-year statute of limitations violation.

Petitioner respectfully requests the Supreme Court find, and order that this lawsuit violated California's one-year statute of limitations, and the judgement and sanction derived therefrom are void *ab initio*. And, that Appellee Justices are each personally liable to petitioner under *Stump, Rankin* and *Zeller*.

This case presents an interesting parallel to law cases at the time of Lord Coke. Then the practice of defense lawyers was to first create a sham defense. And then retain "straw men" to swear in court to the truthfulness of the sham. It was for the judge to ascertain the true facts, on which he would base his decision. In California, Second Appellate District Justices serve as "straw men" to trial court judges to ensure their sham decisions prevail. Then, California Supreme Court Justices serve as "straw men" to the California Appellate Justices to ensure their sham decision prevails. Followed by Federal Court District judges to ensure California Supreme Court decisions prevail. Finally, the Ninth Circuit judges serve as "straw men" to the Federal District Court to ensure

their sham decision prevails. The only difference, in Lord Coke's time, the lawyers created the sham defenses. Now in California, it is the judges that create the sham defenses.

Respectfully submitted,

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July 29, 2010

Chief Justice Alex Kozinski
NINTH CIRCUIT COURT OF APPEALS
P.O. Box 193939
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Re: Unlawful refusal of right to Judicial Council review of judicial misconduct complaint, Case No. 08-56150.

Dear Justice Kozinski,

Rule 5 of the Circuit Rules mandate, if requested, a review by the Ninth Circuit Judicial Council of your rejection of the complaint of judicial misconduct by a judge and a magistrate of the District Court. Rule 6 requires this request be by a single letter addressed to the Clerk of the Court. And, Rule 7 requires this Clerk to acknowledge receipt of the letter and send copies of the letter to members of the Judicial council.

These Rules do not provide for Case Manager Synitha R. Walker to intercede and deny complainant his right to review by the Judicial Council of the judicial misconduct by District Court judicial officers.

Ms. Walker states two reasons for her rejection: The complaint had to be filed electronically; and, was a motion for reconsideration of the Ninth Circuit's refusal to consider the facts and law of complainant's motions for Summary Affirmation. Neither reason applies. The compliance of this case with electronic filing, made mandatory in 2009, does not include complaints of judicial misconduct. The software has not been programed for this pleading, so the code has not been revised.

The complaint of judicial misconduct charged that both the judge and magistrate, of the District Court, refused to acknowledge, and rule, that filing this lawsuit in the California Superior Court violated California's one-year statute of limitations. And, this time-limitation bar, required this lawsuit to be dismissed *ab initio*, and subjected Respondents, California Second Appellate District Justices ("Appellee Justices") to personal liability for fabricating an *equity defense*, and then ruled it superceded and prevailed over the statute of limitations violation. Then abandoning this *equity defense* in the Federal District Court, and alleging two new defenses, to be their only opposition to Appellant's appeal to this court.

California trial court judge Gerald Rosenberg refused to consider the statute of limitations violation by repeatedly rejecting petitioner's *demurrer* that charged this violation. He ruled the *answer* to the *complaint*, filled concurrently with the *demurrer*, superceded, and *nullified* the *demurrer*, contrary to California statutory and case law. (Code of Civil

Procedure, section 472a, that states: "A demurrer is not waived by an answer filed at the same time.") He summarily denied all motions to rule on the *demurrer*; and each time imposed sanctions on appellant for a total of $12,397. Defendant appealed his refusal to apply California's one-year statute of limitations, and dismiss this lawsuit.

The appeal came before the California Second Appellate District, and California Appellate Justices Norman Epstein, Steven Suzukawa and Nora Manella ("Appellee Justices"). They acknowledged violation of the statute of limitations, but affirmed the judgement with an *equity defense* they created based on *fabricated facts* and *fabricated law*. California's Constitution prohibit appellate court justices rendering *equity decision*.

Proof of their fabrications are now before the United States Supreme Court on pages 6 through 11 of the Petition for Writ of Certiorari; copies of these pages are in the Appendix to this letter. Pages 6 through 9 cites California Supreme Court case decisions, and sections of California's Constitution, that forbid its appellate court justices rendering *equity decisions* – even without fabrications of facts and law. On pages 10 and 11 is the undisputed proof of their fabrications. Appellee Justices have not disputed this proof.

Proof their *equity defense* was based on fabricated facts and law, and prohibited by California's Constitution, came before the California Supreme Court

both by *certiorari*, and by petition for it to review of the record under Rule 28, that required the following of the California Second Appellate District Court:

> "Proof shall be filed of the delivery or mailing of one copy of the petition to the clerk of the Court of Appeal which rendered the decision. *The clerk of that court shall transmit to the Clerk of the Supreme Court the original record, briefs, and all original papers and exhibits on file in the cause forthwith on receipt of a copy of the petition . . .*"

This Court of Appeals *did not* file the record in the California Supreme Court as mandated. The Rule 28 petition and *certiorari* were both summarily dismissed, without any comment, by the California Supreme Court; that was assumed would occur. For the past 10-years this Court's bias *is not to rule on the law*.

The statute of limitations violation was then appealed to the Federal District Court, under the Fourteenth Amendment, and came before the Judge and Magistrate that are the subject of this complaint of judicial misconduct.

Appellee Justices had abandoned their *equity* defense and alleged – for the first time two new defenses: "absolute judicial immunity" and the *Rooker-Feldman* defense. No recorded U.S. Supreme Court case could be found that has granted "absolute judicial immunity" to any judge. This is a statement, not a defense.

The *Rooker-Feldman* defense prevent *a federal court* hearing and ruling on a decision, from a *state court case*, that was *either appealed to, or reviewed by, a higher state court*. There was no appeal or rehearing by the California Supreme Court, of California Appellate Justices' *equity defense* ruling. *Certiorari* and the Rule 28 petition were summarily rejected without comment; these rejections do not constitute an appeal or rehearing.

The leading case on Judicial Immunity that refutes "absolute judicial immunity" is *Stump v. Sparkman* that both parties cited and relied. (Citation on page vi, of Petition for Writ of Certiorari to United States Supreme Court.) This case ruled:

> "A distinction must be here observed between *excess of jurisdiction* and the *clear absence of jurisdiction* over the subject matter. *Where there is clearly no jurisdiction over the subject matter any authority exercised is an usurped authority, and for the exercise of such authority, when want of authority is know to the judge, no excuse is permissible.*"

There is no "absolute judicial immunity" defense under *Stump* or any other U.S. Supreme Court case. "Judicial immunity" depends on a judges *jurisdiction* over the subject matter. Appellee Justices had absolutely no jurisdiction to fabricate an *equity defense* based on *fabricated facts, fabricated law, and in violation of California's Constitution*. Affirmation of "absolute judicial immunity" would grants judges *unlimited dictatorial power* with impunity. Intentionally

making a false entry in a legal document is a crime, and violation of California Penal Code, section 134 and Title 18 of the U.S. Criminal Code. (*See*: Petition for Writ of Certiorari to United States Supreme Court, pages v, vi, and vii.)

Appellant answered Appellee Justices' belated defenses of "absolute judicial immunity" and *Rooker-Feldman* principle, and concluded neither applied; and neither was legally sustainable by the true facts. Appellant repeatedly pleaded the proof that the lawsuit was time-barred by the one-year statute of limitations. The Magistrate both ignored the statute of limitation defense and Appellant's responses to Appellee Justices two alleged and belated defenses. He completely adopted, and restated Appellee Justices fallacious belated defenses as the exclusive basis for the judgment, that the Judge affirmed. As proof, the Magistrate's "Report and Recommendations" was the only authority cited by the Judge *as the entire and only basis for her Judgment,* it is on page App. 6 of the Petition for Writ of Certiorari to the United States Supreme Court. *No where in this documents is any defense offered to the statute of limitations violation; it was intentionally ignored by the magistrate and judge.*

Two hearings were scheduled to assert the statute of limitations violation; both were canceled without notice. The first with a locked courtroom door; the second by the response of the Judge's clerk's to Appellant's telephone call to confirm the hearing.

This case when to the Ninth Circuit from the District Court with no defense offered by Appellee Justices to the statute of limitations violation; the abandoned *equity defense*; and, Appellant's opposition to the belated "absolute judicial immunity" and *the Rooker-Feldman* defense. Defenses the Judge and Magistrate never addressed and never considered in their judgment. Their only purpose was to protect Appellee Justices from having to answer to these issues in the District Court. The undisputed facts are that this lawsuit was filed in the trial court 19-months after being barred by California's one-year statute of limitations.

The judge and magistrate's intentional prevention of the statute of limitations violation becoming an issue by their refusal to address it, is Judicial Misconduct that deserves Ninth Circuit review by its Judicial Council to determine if Appellee Justices, "clearly [had] *no jurisdiction* over" their fabrication of an *equity defense* that succeeded in replacing and excusing the California one-year statute of limitations. This is the only relevant issue in this case, and should have been dismissed *ab initio* by the trial court, the California Second Appellate District Court, the California Supreme Court, the Federal District Court, and the Ninth Circuit.

> " . . . where there is clearly no jurisdiction over the subject matter any authority exercised is an usurped authority, and for the exercise of such authority, when no authority is known to the judge, no excuse is permissible."

Stump v. Sparkman (Page 13-14, Petition for Writ of Certiorari to the United States Supreme Court.)

The Ninth Circuit responded to the three motions requesting Summary Affirmation with terse remarks conveying an annoyed refusal to affirm the statute of limitations violation that California's Supreme Court refused to do. None of these three remarks addressed the statute of limitations issue, or any other issue; only three to five line conclusions affirming the other court's actions. This aggravation is understandable and respected. Nevertheless, the Ninth Circuit is obligated to address and act on this issue under the Fourteenth Amendment: "No state . . . [shall] deny to any person within its jurisdiction the equal protection of the laws."

The District Judge and Magistrate violated Cannons Nos. 1 and 3, of the Code of Conduct for United States Judges, by *intentionally* refusing to address, and rule, on the one-year statute of limitations violation that would have terminated this lawsuit *ab initio*. Appellee Justices' abandonment of their *equity defense* in the District Court, removed all opposition to violation of the one-year statute of limitations. Their newly adopted defenses, "Absolute Judicial Immunity" and "*Rooker Feldman*" are irrelevant for being filed after this lawsuit legally ceased to exist – *and they should have so ruled.*

Conclusion

For there to be a ruling on the "merits" all of the issues must be considered and decided. And, exclude those unsupported conclusions California Appellate Justices and Federal District Judge and Magistrate, want to include to favor the Appellate Justices. Particularly, their disregard of the statute of limitations defense that render their defenses moot. Canons of Ethics for California judges and federal judicial officers demand this.

This case parallels the law cases at the time of Lord Coke. Then the practices of defense lawyers was to first create a sham defense. Then retain 'straw men" to swear in court to the truthfulness of the sham. It was for the judge to ascertain the true facts, on which he would base his decision. In California, Second Appellate District Justices serve as "straw men" to trial court judges to ensure their sham decisions prevail. Then, California Supreme Court Justices serve as "straw men" to the California Appellate Justices to ensure their sham decisions prevail. Followed by the Federal District Court Justices to ensure California Supreme Court decisions prevail. The only difference, in Lord Coke's time the lawyers created the sham defenses. Now, in California, it is the judges that create the sham defenses.

Respectfully submitted,

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